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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

Petitioner's printed

No. 405

CHARLES SWANSON,

Petitioner,

vs.

MARRA BROTHERS, INC.,

Respondent

BRIEF ON BEHALF OF PETITIONER ON WRIT OF CERTIORARI

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CONSTITUTION OF THE UNITED STATES

Article 3, Section 2 2

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I

The Opinions of the Courts Below

The opinion of the United States District Court for the Eastern District of Pennsylvania (R. 9) was rendered on October 16, 1944, and is reported in 57 F. Supp. 456.

The per curiam opinion of the United States Circuit Court of Appeals for the Third Circuit (R. 18) was rendered on June 13, 1945, and is reported in 149 F. (2d) 646.

II

Jurisdiction

1. The date of the judgment entered herein by the United States Circuit Court of Appeals for the Third Circuit affirming the judgment of the District Court, is June 13, 1945.

2. This suit was predicated upon the maritime law, as modified by the Act of Congress known as the Merchant Marine Act, March 4, 1915, c. 153, sec. 20, 38 Stat. 1185; June 5, 1920, c. 250, sec. 33, 41 Stat. 1007, 46 U. S. C. A. 688.

3. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, C. 229 Sec. 1, 43 Stat. 938, United States Code, Title 28, Section 347 (a) and under Article 3, Section 2, of the Constitution of the United States.

III

Statement of the Case. Summary Statement of the Matter Involved

This is an action by a longshoreman, against his employer, for personal injuries, claiming the benefits of Sec. 33 of the Merchant Marine Act of 1920, more popularly known as the Jones Act.

The Complaint shows (R. 2-3) that the defendant, Marra Brothers, Inc., is a stevedoring company engaged in the business of loading and discharging cargo from vessels plying in navigation and commerce. On March 14, 1944, the defendant undertook to load the steamship "Meyer London", which was berthed at Pier 98, South Wharves in Philadelphia. Plaintiff was one of defendant's employees

assigned to load the vessel and at the particular moment of the incident involved herein he was on the pier alongside the vessel hooking up the drafts which were to be hoisted on to the deck of the vessel and thereafter stowed into the holds by other employees of the defendant. It was while one of the drafts was being hauled aboard the vessel that a life raft, part of the ship's equipment, became loosened from its moorings and fell to the pier, striking plaintiff and causing the injuries for which this suit was brought.

Defendant thereupon moved to dismiss the complaint upon the ground that the plaintiff's remedy is under the Workmen's Compensation Law for the State of Pennsylvania, and that he is not entitled to the benefits of the Jones Act.

The Opinions of the Courts Below

The learned District Judge held that although the Jones Act had been held to be applicable to longshoremen, it is limited to injuries sustained on the vessel and does not extend to injuries occurring on the dock, notwithstanding that the injured employee is engaged in the same enterprise as his fellow employees on the vessel. The Court recognized that longshoremen must be construed as seamen within the meaning of the Jones Act, and that the Jones Act covers seamen's injuries on shore, but felt constrained to hold, although recognizing that the question was not free from difficulty, that the benefits of the Jones Act did not extend beyond the water's edge, insofar as longshoremen are concerned, upon the authority of *T. Smith & Son v. Taylor*, 276 U. S. 179, 72 L. Ed. 520. The Court stated that while the latter decision did not consider or pass upon the applicability of the Jones Act, it did hold that a State Compensation Act was applicable to a longshoreman injured on shore, and therefore, if the Jones Act was to be applied to longshoremen's injuries on shore, that construc-

tion should be rendered by the Supreme Court itself. The decision of the District Court was affirmed by the Court of Appeals in a per curiam opinion.

IV

Specifications of Error

The Circuit Court of Appeals erred in the following respects:

First: In failing to hold that a longshoreman injured on on the pier in the course of his employment is a seaman within the meaning of the Jones Act and is governed by the provisions thereof.

Second: In holding that the Compensation Act for the State of Pennsylvania applied to an injury sustained by a longshoreman on the pier in the course of his employment.

Third: In holding that the applicability of the Jones Act depends upon the *place* where the injury occurs rather than upon the *nature of the service* being performed and its relation to the operation of the vessel plying in navigable waters.

Fourth: In holding that the *Nordenholt* and *Smith* v. *Taylor* cases are the controlling authorities governing the case at bar.

Fifth: In holding that a longshoreman is a seaman within the Jones Act only when working on the vessel and not while engaged in the same employment on the pier.

V

ARGUMENT

Summary of Argument

Prior to 1920, there was no Federal rule governing the rights of longshoremen injured ashore, and under the circumstances, a limited application of the state law was permitted so long as it did not encroach on the Admiralty jurisdiction. The passage of the Jones Act in 1920 provided a right of action for all "seamen", and, in the case of *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, 71 L. Ed. 157, the Supreme Court held that longshoremen were "seamen" within the meaning of that Act. That Act applies to all injuries sustained in the "course of employment" and contains no limitation as to the place where the injury occurs. In the case of *O'Donnell* v. *Great Lakes Dredge and Dock Co.*, 318 U. S. 36, 87 L. Ed. 596, the Supreme Court further held that the Jones Act applies equally to injuries on shore as well as aboard the vessel; the applicability of the Jones Act depends not on the *place* where the injury is inflicted, but on the *nature of the service* being performed and its relationship to the operation of the vessel plying in navigable waters. In 1927, Congress passed the Longshoremen's and Harborworkers' Compensation Act (March 4, 1927 C. 509, Sec. 1, 44 Stat. 1424—33 U. S. C. A. 901 et seq.), but limited its application to injuries sustained on navigable waters. Prior to the O'Donnell decision there was some doubt as to whether Congress could legislate in connection with injuries sustained on land. It is fair to assume therefore that Congress limited the scope of the Longshoremen's Act to injuries sustained only on navigable waters in order to avoid any possible constitutional objections. It was not until after the passage of the Longshore-

men's Act that the O'Donnell decision cleared the air and held that injuries sustained on the pier were within the scope of the maritime law if the service being performed was maritime in nature. Since the Longshoremen's Act is limited to injuries on the water, it is plaintiff's contention that injuries on the deck are governed by the law as it existed prior to that Act; the prior law being the Jones Act, which applies to injuries on the pier as well as on the water.

Petitioner makes the following contentions:

1. Prior to the passage of the Longshoremen's and Harborworkers' Compensation Act, longshoremen were accorded all the rights of seamen under the Jones Act.

2. The applicability of the Jones Act depends not on the place where the injury is inflicted, but rather on the nature of the service being performed and its relation to the operation of the vessel plying in navigable waters. Thus, the rights of a seaman injured on the dock in the course of his employment are governed by the Jones Act.

3. The Longshoremen's Act being restricted in its application to injuries sustained on navigable waters, the rights of longshoremen injured on the dock are not affected thereby. Consequently, a longshoreman injured on the dock is relegated to his rights under the Jones Act, and since Congress has, by that Act, legislated in the field, state compensation laws cannot be constitutionally invoked.

FIRST POINT

Longshoremen Have All the Rights of Seamen under the Jones Act

It is essential to a clear understanding of the longshoreman's rights to probe into the origin and development of this class of men who play such an important role in our

water transportation system. They are of course to be distinguished from the men who sail the ships into the remote corners of the world, but their work is so closely intertwined that the Merchant Marine could hardly operate efficiently without the cooperation of both.

In the early days of merchant shipping, the work of loading and discharging the cargo was performed by the ship's crew as part of its regular duties. With changing times and increased commerce, there arose a need for specialized skill and rapidity in the handling of equipment and cargo. Those duties having to do with the handling of cargo were therefore taken over by the type of men who came to be known as stevedores or longshoremen and because the duties which they performed had previously been those of the ship's crew, they were characterized for certain purposes as seamen. Their status is aptly analyzed in *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, 58 L. Ed. 1208, as follows:

> "The libellant was injured on a ship, lying in navigable waters, and while he was engaged in the performance of a maritime service. We entertain no doubt that the service in landing and stowing a ship's cargo is of this character. Upon its proper performance depend in large measure the safe carrying of the cargo and the safety of the ship itself; and it is a service absolutely necessary to enable the ship to discharge its maritime duty. Formerly the work was done by the ship's crew; but, owing to the exigencies of increasing commerce and the demand for rapidity and special skill, it has become a specialized service devolving upon a class 'as clearly identified with maritime affairs as are the mariners'."

From the earliest times the Courts extended as far as possible the same privileges and immunities to the longshoremen as were afforded to members of the crew. In the

"Canada", 7 Fed. 119 (1881) the Court held that a stevedore who unloaded the ship was entitled to a lien for wages against the vessel as though he were a member of the crew. In contrasting the status of the longshoreman with that of the crew member, the Court reviews the authorities and quotes with approval from the opinion of the learned Judge Benedict in the "Circassion" (1 Ben. 209) which is particularly appropriate at this point:

> "The same view was taken of the matter, on principle, by Judge Benedict, in the Circassion, 1 Ben. 209. He says: 'I confess that I have never been able to see any sound distinction between the nature of the services performed in stowing and breaking out the cargo of a ship and the services performed in its transportation. The stowage and the landing of the cargo form a necessary part of the contract of affreightment. Without the performance of this duty no freight can be earned. The safety of the ship and cargo depends, in a great measure, upon the care and skill displayed in the performance of this duty, and for its non-performance in a proper manner the ship is liable in the admiralty. It is a service which, when performed by the crew, as is frequently the case, is considered a maritime service, and compensated in the admiralty under the name of wages. And, when not performed by the crew, it devolves upon a class as clearly identified with maritime affairs as are the mariners, and fitted for their duty by a special and peculiar experience.'"

Further indication of judicial trend to extend all possible maritime benefits to longshoremen is evidenced in the case of *McCahan Sugar Refining Co.* v. *Stoffel*, 41 F. (2d) 651 (C. C. A. 3) where a longshoreman signed a certain paper in which he released his employer and agreed to be bound by the State Compensation Act. The Court of Appeals declared the release invalid under the Maritime

law upon the theory that a longshoreman is a seaman with all his peculiar rights and immunities. Said the Court:

> "There is no question that seamen, though favored by the law and regarded as wards in admiralty, are capable of making releases for maritime injuries, yet in making such releases their rights are tenderly guarded and their acts, when waiving or yielding their rights, are carefully scrutinized."
>
> . . . . . .
>
> *"The law regards a longshoreman or stevedore injured while engaged in maritime service aboard a ship lying in navigable waters, as a seaman with all his peculiar rights and immunities."* (Emphasis ours.)

One of the ablest discussions on the point is rendered by Circuit Judge Goodrich in *Sieracki* v. *Seas Shipping Co.*, 149 F. (2d) 98. In that case a longshoreman was injured by a falling boom due to a defective shackle. The Court found that the shipowner was not negligent because the defect could not be disclosed by a reasonable inspection, but nevertheless held the shipowner liable because of the warranty of seaworthiness. It was contended that the warranty extended only for the benefit of members of the crew, but the Court rejected that contention and held that longshoremen were seamen and entitled to the same warranty of seaworthiness afforded to members of the crew. A few brief excerpts from the opinion are most pertinent to the argument at bar: (p. 101)

> "We think it is undisputed that if the falling boom had hit one of the sailors the injured seaman could have recovered from the ship's owner, or the ship, on the basis of breach of warranty of seaworthiness, that warranty not being dependent upon a showing of negligence at all."
>
> . . . . . .

"What, then, are the reasons for and against the application of the protection against injuries from unseaworthiness to one engaged in loading and stowing a ship's cargo? There is no question that in fact such service is necessary in the performance of the business of the ship. Formerly the work was done by the ship's crew, but owing to the demand for rapidity and special skill it has become a special service, one which has been called "as clearly identified with maritime affairs as are the mariners". And so an injury to a stevedore comes within the classification of a marine tort."

* * * * * * *

"It seems, therefore, that when a man is performing a function essential to maritime service on board a ship the fortuitous circumstances of his employment by the ship owner or a stevedoring contractor should not determine the measure of his rights. This is the very basis on which the Jones Act, 46 U. S. C. A. § 688, was held applicable to give redress to an injured stevedore in International Stevedoring Co. v. Haverty."

In summing up the trend of the decisions of the United States Supreme Court, Judge Goodrich made this very pertinent concluding statement: (p. 102)

"The logical trend of the Supreme Court authority is, we think, in favor of extending to the stevedore the rights of a seaman when engaged in marine employment."

Thus, all through the law the trend, as Judge Goodrich stated, is to afford longshoremen as far as possible the same privileges possessed by members of the crew in the protection of their wages (The Circassion), their contracts (*McCahan* v. *Stoffel*), and their rights on account of personal injuries (*International Stevedoring Co.* v. *Haverty*—*Sieracki* v. *Seas Shipping Co.*) With the passage of the Jones Act, therefore, it was to be expected that longshore-

men should be considered "seamen" within the meaning of that Act and accorded the benefits thereunder.

The Jones Act incorporated into the maritime law, inter alia, a right of action for negligence and abolished the fellow servant rule. Shortly after the passage of the Act, it was contended by the stevedoring companies that the Act only applied to those "seamen" who were members of the crew and not to longshoremen. The question was presented to the Supreme Court in the case of *International Stevedoring Co.* v. *Haverty* (*supra*), and the Court again evidenced its consistent trend by classifying longshoremen as seamen within the meaning of the term "seamen" as used in the Jones Act. In analyzing the term "seamen" as it applied to longshoremen the Court said: (p. 52)

> "It is true that for most purposes, as the word is commonly used, stevedores are not "seamen". But words are flexible. The work upon which the plaintiff was engaged was a maritime service formerly rendered by the ship's crew."

The Court then goes on to point out that the longshoremen should not be prejudiced simply because they happen to be employed by the stevedore rather than by the vessel:

> "We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship."

Mr. Justice Holmes points out that the policy of the statute is directed to the protection of the men, and there should be no distinction in the application of the Act between longshoremen and members of the crew:

> "The policy of the statute is directed to the safety of the men and to treating compensation for injuries to

> them as properly part of the cost of the business. If they should be protected in the one case, they should be in the other."

Another pertinent decision which further emphasizes the same consistent trend is *Uravic* v. *Jarka Co.*, 282 U. S. 234, 75 L. Ed. 312. There, a longshoreman was killed on a German ship. It was contended there that the longshoreman could not possibly be considered as a seaman because the vessel flew the German flag and its crew was German. The Supreme Court rejected this contention with the following crystal clear statement: (p. 239).

> "Perhaps it would be a sufficient answer to the objections that while the § 33 is construed to give the rights of seamen to stevedores it does not say or mean that stevedores are to be regarded as seamen on the particular vessel upon which for the moment they happen to be at work. *They simply are given the rights of seamen and as they are American workmen they have the rights of American seamen as well on German as on American ships.*"

In summary, while the longshoreman may be distinguished from the member of the crew, there can be no doubt but that he has the rights of a seaman at least in connection with his claims for personal injuries, his earnings and his contracts. It has already been determined that longshoremen are "seamen" within the Jones Act; it would be anomalous to say that the scope of the Jones Act varies with the type of "seamen."

SECOND POINT

The Applicability of the Jones Act Does Not Depend on the Place Where the Injury Occurred But Rather on the Nature of the Service Being Performed and Its Relation to the Operation of the Vessel Plying in Navigable Waters.

Prior to the decision in the *O'Donnell* case, there was considerable confusion concerning the territorial scope of the Jones Act. It was contended by the employers from the very outset that the Act did not extend to injuries sustained on land even though the Act contained no such limitation. This contention was based on the proposition that the Act was applicable only to the extent that admiralty generally had jurisdiction, and it was reasoned, since that jurisdiction stops at the water's edge, that likewise marked the bound within which the Jones Act was applicable. This restrictive theory, which may be termed the geographical theory, gained and held a beachhead in the law until the decision in the *O'Donnell* case. In point of fact that theory was applied just as well to members of the crew as to longshoremen. In *O'Brien* v. *Calmar S. S. Corporation*, 104 F. 2d 148, a member of the crew was injured on the pier while handling the gangway in the course of his employment. The Court of Appeals held that the tort being committed on land was governed by the State Compensation law, and admiralty had no jurisdiction.

It will thus be noted that there was no distinction made between members of the crew and longshoremen in the application of the Jones Act. The same theory which the Courts below followed in the instant case to defeat a longshoreman's claim was used to deny recovery to a member of the crew. *The significance of this situation lies in the fact that recovery was denied in both cases, not because the Jones Act by its own terms is limited to torts com-*

mitted on the water, but because the courts read that interpretation into the Act. If such an interpretation were justified, then it would have to apply uniformly to all those employees covered by the Act. *Conversely, if the interpretation be erroneous then it is erroneous as to all employees and not merely to a portion of them.*

The utter fallacy of the geographical theory as it applies to the Jones Act is disclosed in the *O'Donnell* decision. In that case the Supreme Court points out that the Jones Act is intended, and so worded, as to include all injuries sustained *in the course of employment*. The seaman is just as much in the course of his employment while working on the pier as he is on the vessel. It is an absolute necessity that the crew go ashore in the performance of their duties, either to assist in mooring the vessel, to connect a fuel line, or in the performance of other duties related to the operation of the vessel. It was a paradoxical rule which the Court of Apepals laid down in the *O'Brien* case (supra), wherein a recovery was denied to a member of the crew who was injured while maneuvering the gangway on the dock, preparatory to attaching it to the vessel. That rule, and the geographical theory upon which it was based, was repudiated by the Supreme Court in the *O'Donnell* case upon the ground that the jurisdiction under the Jones Act depends not on the place where the injury is inflicted, but rather on the nature of the service being performed and its relation to the operation of the vessel plying in navigable waters. A brief analysis of the O'Donnell decision will show how completely the beachhead established by the *O'Brien* case has been wiped out.

Mr. Chief Justice Stone, speaking for the Court, significantly points out at the commencement of the Opinion that the term "seamen" as used in the Jones Act has been

interpreted to embrace longshoremen, as well as members of the crew: (p. 39)

> "The term 'seaman' has been interpreted to embrace those employed on a vessel in rendering the services customarily performed by seamen, including stevedores while temporarily engaged in stowing cargo on the vessel."

In considering the coverage under the Act, the Court makes the pertinent observation that the Act expressly covers all injuries sustained "in the course of employment"; and there is no reason to assume that those words do not mean what they say: (p. 39)

> "There is nothing in the legislative history of the Jones Act to indicate that its words 'in the course of his employment' do not mean what they say or that they were intended to be restricted to injuries occurring on navigable waters. On the contrary, it seems plain that in taking over the principles of recovery already established for railroad employees and extending them in the new admiralty setting (see The Arizona v. Anelich, 298 U. S. 110, 80 L. Ed. 1075, 56 S. Ct. 707, supra) to any seaman injured 'in the course of his employment', Congress, in the absence of any indication of a different purpose, must be taken to have intended to make them applicable so far as the words and the Constitution permit, and to have given to them the full support of all the constitutional power it possessed. Hence the Act allows the recovery sought unless the Constitution forbids it."

The Court then takes up the jurisdictional question and squarely repudiates the O'Brien line of decisions: (p. 40)

> "It is true that the jurisdiction in admiralty in cases of tort or collision is in general limited to events occurring on navigable waters."

. . . . . .

"But it cannot be supposed that the framers of the Constitution contemplated that the maritime law should forever remain unaltered by legislation, The Lottawanna (Rodd v. Heartt) supra (21 Wall. (U. S.) 577, 22 L. ed. 662), or that Congress could never change the status under the maritime law of seamen, who are peculiarly the wards of admiralty, or was powerless to enlarge or modify any remedy afforded to them within the scope of the admiralty jurisdiction. There is nothing in that grant of jurisdiction—which sanctioned our adoption of the system of maritime law—to preclude Congress from modifying or supplementing the rules of that law as experience or changing conditions may require. This is so at least with respect to those matters which traditionally have been within the cognizance of admiralty courts either because they are events occurring on navigable waters, see Waring v. Clarke, 5 How. (U. S.) 441, 12 L. Ed. 226, supra, *or because they are the subject matter of maritime contracts or relate to maritime services.*" (Emphasis ours.)

The Court then lays down the rule which makes for uniform operation as follows: (p. 42)

"The right of recovery in the Jones Act is given to the seamen as such, and, as in the case of maintenance and cure, the admiralty jurisdiction over the suit *depends not on the place where the injury is inflicted but on the nature of the service and its relationship to the operation of the vessel plying in navigable waters.*"

It is significant that the Court used the term "seamen" and not "members of the crew" as distinguished from longshoremen. It is even more pertinent that the Court observed at the outset that the term "seamen" has been interpreted to embrace longshoremen. It must necessarily follow that the jurisdictional provision as it applies to "Seamen" covers all who fall within the scope of the term.

Before the longshoremen took over the job of handling the cargo, it was the duty of the ship's crew to perform the services on the pier as well as on the ship. The stevedore performs the same work and is just as much in the course of his employment on the pier as when he discharges his duties on the ship's deck. This is the criterion which determines the applicability of the Jones Act and not the fact that he may be standing in one spot or another at the time of the injury.

In connection with his wages, a stevedore has a lien against the vessel, not because of the place where those services were performed, but because of their maritime nature. "The Geo. T. Kemp" Fed. Case No. 5341. Moreover, even though a contract be made on land, if the subject matter concerns the navigation of the seas, it is a case of admiralty and maritime jurisdiction. As the Court said in the "Circassion", (supra), the stowage and landing of cargo form a necessary part of the contract of affreightment, without which no freight can be earned. That the stevedore is just as much in the course of his employment and engaged in a maritime service on the pier as he is on the deck of the vessel is hardly open to dispute. There can be no distinction in this respect between seamen who are members of the crew and those who are longshoremen, as the Supreme Court said in the Haverty case: (p. 52)

> "*We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship.* The policy of the statute is directed to the safety of the men and to treating compensation for injuries to them as properly part of the cost of the business. If they should be protected in the one case, they should be in the other." (Italics supplied.)

THIRD POINT

A Longshoreman Injured on the Pier in the Course of His Employment Is a "Seaman", Governed by the Jones Act to the Exclusion of Any State Law.

The Courts below were by no means certain of the soundness of their conclusion. To reach that conclusion, they felt compelled to depart from the rule of reason to follow what they considered to be a binding precedent established by the *Smith* v. *Taylor* and *Nordenholt* cases. It is appropriate, therefore, to consider the facts and doctrines found in those decisions.

In the case of *Smith* v. *Taylor*, (*supra*), the suit was by the widow of a deceased longshoreman under the Louisiana Compensation Law, to recover compensation for herself and her children. An award under that Act was affirmed by the Louisiana Court of Appeals and affirmed by the Supreme Court of the United States. The facts were as follows: A sling of cargo was being swung from the vessel to a staging which rested solely upon the pier and projected a few feet over the water to or near the side of the vessel. The deceased was standing on the stage trying to steady the swinging slingful of cargo when it struck him and precipitated him into the water causing his death. After reciting the facts the Court states the issues and uses language which, at first blush, would seem to be diametrically opposed to the logic and rulings of the O'Donnell decision, as follows: (p. 181)

> "Deceased was engaged in maritime work under a maritime contract. If the cause of action arose upon the river, the rights of the parties are controlled by maritime law, the case is within the admiralty and maritime jurisdiction, and the application of the Louisiana Compensation Law violated § 2 of Art. 3. But,

if the cause of action arose upon the land, the state law is applicable."

This position of the Court, however, is explained by the following excerpt which shows that the Court was merely accepting the issues as advanced by the parties: (p. 181-182)

> "Plaintiff in error *concedes* that the stage and wharf on which deceased was working are to be deemed an extension of the land * * * *and that the State law would apply if he had been injured or killed by falling on the landing place.* It argues that as no claim was made for injuries sustained while deceased was on land *and as the suit was solely for death that occurred in the river, the case is exclusively within the admiralty jurisdiction.*" (Emphasis ours.)

Thus, there was only one narrow issue which the Court recognized as having been advanced by the parties themselves, namely: Did the tort occur on land or on water? With this very issue in mind, the Court then goes on to say: (p. 182)

> "The blow by the sling was what gave rise to the cause of action. It was given and took effect while deceased was upon the land. It was the sole, immediate and proximate cause of his death * * * The substance and consummation of the occurrence which gave rise to the cause of action took place on land."

Significant also is the next and concluding sentence of the Court: (p. 182)

> "This case cannot be distinguished from Johnson v. Chicago Elevator Co., 119 U. S. 388, 30 L. Ed. 447."

This latter case cited by the Court illustrates clearly that the Court did not have in mind the Jones Act, for in that case the suit was to recover for damage done to a grain elevator on the pier by the swinging of a ship's boom. The tort there was held to be non-maritime and therefore the

State law applied. There was nothing else in that case to call for the application of the maritime law. By basing its decision on that case, the Court, in *Smith* v. *Taylor*, could not have considered any other factor which might have had a bearing. It may be that the Court could and should have considered the effect of the Jones Act, but it is amply clear that it did not do so. It is equally clear that its deliberations and decision were confined to the single issue, as advanced by the parties—Did the tort occur on the land or on water? Under these circumstances, it can hardly be inferred, as the Courts below did here, that *Smith* v. *Taylor* decided that the Jones Act did not apply to injuries sustained by longshoremen on shore. If such an inference were permitted, the same reasoning would compel the identical conclusion with respect to members of the crew. That such is not the case is no longer open to dispute. We think it is fair to state that *Smith* v. *Taylor* did not decide any of the issues here involved and should not have been considered as controlling.

The other case which the Courts below felt bound to follow is *State Industrial Commission* v. *Nordenholt*, 259 U. S. 263, 66 L. Ed. 933. In that case the longshoreman, on May 15, 1918, was injured on the dock while engaged in unloading the vessel and died of those injuries. The mother of the decedent applied to the State Compensation Commission, which rendered an award in her favor. It was set aside on appeal and certiorari was granted by the Supreme Court. This Court reversed upon the ground that the State law could validly be applied to injuries sustained on land by employees engaged in maritime service, *provided, however, that the State law did not conflict with any Federal rule.* (The accident there occurred in 1918—the Jones Act was passed in 1920.) Said the Court: (p. 275-276)

> "Isana was injured upon the dock, an extension of the land * * *, and certainly, prior to the Work

men's Compensation Act, the employer's liability for damages would have depended upon the common law and the state statutes. Consequently, when the Compensation Act superseded other state laws touching the liability in question, it did not come into conflict with any superior maritime law."

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"The stevedore's contract of employment did not contemplate any dominant Federal rule concerning the master's liability for personal injuries received on land. In Jensen's Case, rights and liabilities were definitely fixed by maritime rules, whose uniformity was essential. With these the local law came into conflict. *Here no such antagonism exists. There is no pertinent Federal statute; and application of the local law will not work material prejudice to any characteristic feature of the general maritime law.*"

Thus, the underlying reason which permitted the application of the State law was the fact that *there was no Federal law which could be applicable*. Prior to 1920, there was no remedy under the maritime law for an injury to a longshoreman on the dock. The State law was not, therefore, in conflict with any dominant Federal rule and the award by the Commission was, therefore, valid. We submit that this decision supports petitioner's argument. As to the instant case, the Jones Act was passed in 1920, two years after the Nordenholt decision. If the Jones Act had been in effect at the time of the accident in that case, the opposite conclusion would have been reached because there would then have been a dominant Federal rule which would have barred the application of any State law. The Jones Act, in 1920, gave a right of action for injuries on the pier where there had been no right of recovery before under the Federal law.

Reduced to simple terms, the issues involved here may thus be stated. The Jones Act applies to and includes

longshoremen as well as members of the crew (Haverty case); the Act applies to and includes injuries sustained on shore as well as aboard ship (O'Donnell case). Since the Longshoremen's and Harborworkers' Compensation Act does not include injuries sustained on shore, it necessarily follows that the longshoreman injured on shore has an unqualified right to proceed under the Jones Act to the exclusion of any State law. Since the Jones Act is applicable, any attempt to apply a State Compensation Law must necessarily be denied as invalid. *Northern Coal and Dock Company v. Strand*, 278 U. S. 142, 73 L. Ed. 232. In that case the Court said (p. 147):

> "We think it necessarily follows from former decisions that by the Merchant Marine Act—a measure of general application—Congress provided a method under which the widow of Strand might secure damages resulting from his death, and that no state statute can provide any other or different one. See Patrone v. M. P. Howlett, 237 N. Y. 394, 143 N. E. 232."

VI

Conclusion

The Courts below have rendered a decision which is in direct conflict with the applicable decisions of this Court. The decision works material prejudice to the maritime law and destroys its uniformity of application. It is respectfully submitted that the decisions of the lower courts should be reversed and the case remanded for trial on the merits under the maritime law as modified by the Jones Act.

Respectfully submitted,

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